

Division of Securities
Utah Department of Commerce
160 East 300 South, Second Floor
P. O. Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

JAMES MELVIN HARDMAN

Respondent.

**STIPULATION AND CONSENT
ORDER**

Docket no. SD-05-0024

The Utah Division of Securities, (Division), by and through its Director of Enforcement, Michael Hines, and James Melvin Hardman (Hardman or Respondent) hereby stipulate and agree as follows:

1. Hardman was the subject of an investigation conducted by the Division into allegations that Hardman violated certain provisions of the Utah Uniform Securities Act (the Act), Utah Code Ann. § 61-1-1, et seq, as amended.
2. In connection with that investigation, on May 20, 2005, the Division issued an Order to Show Cause against Hardman.
3. Hardman and the Division have agreed to settle this matter by way of this Stipulation and Consent Order.

4. Hardman admits the jurisdiction of the Division over Hardman and over the subject matter of this action.
5. Hardman is represented by attorney Richard J. Culbertson and is satisfied with the legal representation he has received.
6. Hardman has read this Stipulation and Consent Order, understands its contents, and enters into this Stipulation voluntarily. No promises or threats have been made by the Division, nor by any member, officer, agent, or representative of the Division, other than as contained herein, to induce Hardman to enter into this Stipulation and Consent Order.
7. By entering into this Stipulation and Consent Order, Hardman waives any right to a hearing to challenge the Division's evidence and present evidence on Hardman's behalf.
8. Hardman also understands that, by entering into this Stipulation and Consent Order, he gives up the right to seek agency review or an appeal of this matter.
9. Hardman acknowledges that this Stipulation and Consent Order, upon approval by the Division Director, shall be the final compromise and settlement of this matter. Hardman further acknowledges that if the Division Director does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.

The Division's Investigative Findings

10. Between August 2004 and May 2005, the Division conducted an investigation into this matter that revealed the following:
 - a. James Melvin Hardman resides in Salt Lake City, Utah.
 - b. Hardman is not now, nor has he ever been, licensed to sell securities in Utah.

- c. From December 1998 through March 2004, Hardman frequented a Salt Lake City retail store owned and operated by Utah resident, Investor. Hardman befriended Investor and came in to the store to tell her how much money he was making trading in the futures market.
- d. Hardman told Investor he wanted to get several investors and pool their money to invest in the futures market, and that he would act as the financial adviser over the investment and make all of the investment decisions on the investors' behalf.
- e. Hardman told Investor he was trained on the S&P 500 E-Mini trading market and that he wrote a handbook for trading E-Minis. E-minis are futures contracts that can be traded electronically on the Chicago Mercantile Exchange and are based on the S&P 500 index. Hardman told Investor that all of her money would be invested in E-Minis.
- f. In connection with the offer and sale of the investment to Investor, Hardman made the following representations:
 - i. That profits would yield 10-25% each day;
 - ii. That the investment was low-risk;
 - iii. That if Investor invested \$10,000 he could increase her money by 10-25% per day;
 - iv. That he would guarantee her initial investment back by December 2003;

- v. That once Investor's trading account was established, Investor would have access to all account activities and statements; and
 - vi. That Investor's money would be used to purchase E-Minis.
- g. In connection with the offer and sale of the investment to Investor, Hardman failed to provide Investor with certain material information which would have allowed her to make an informed investment decision. Hardman failed to provide Investor with the following material information:
- i. That Hardman was not licensed to sell the investment;
 - ii. Whether the investment was a registered security or exempt from registration;
 - iii. That Hardman had several civil judgments against him totaling \$1,197,103.94;
 - iv. A description of operational costs involved in trading E-Minis;
 - v. Whether commissions or compensation would be paid relating to the investment;
 - vi. A description of how the investment makes money;
 - vii. The degree of risk involved for the investor; and
 - viii. Whether there were any lawsuits, judgments, tax liens, bankruptcies, or actions taken by regulatory agencies against any individual involved with the investment.

- h. On March 26, 2003, at Investor's home in Sandy, Utah, Investor gave Hardman her first investment of \$10,000 by personal check made out to Hardman.
- i. At the March 26, 2003 meeting, Hardman told Investor he wanted to set up a limited liability company to safeguard Investor from being held liable should Hardman be sued for tax reasons. Hardman told Investor he would be the general partner and make all of the investment decisions on Investor's behalf, and that Investor would be the limited partner whose only role was supplying capital.
- j. On April 25, 2003, Hardman registered TwoMells, LLC (TwoMells) as a Utah limited liability company. TwoMells' registration expired on August 19, 2004 for failure to file a renewal. Hardman was listed as a member and the registered agent of TwoMells, and Investor was listed as a member.
- k. Hardman told Investor that her trading account would be set up under the name TwoMells, LC, and once the account was established, she would have access to all account activities and statements.
- l. On September 29, 2003, Hardman told Investor if he had more money he could double Investor's profits and return her initial investment before December.
- m. On October 6, 2003, at Hardman's home in Salt Lake City, Utah, Investor gave Hardman her second and final investment of \$10,000 by personal check made out to Hardman.
- n. Despite Investor's numerous requests, Hardman never supplied Investor with statements or transaction reports from her account.

- o. Investor received no return of principal or interest from her investment with Hardman.¹

The Division's Conclusions

- 11. Based on the Division's investigative findings, the Division concludes that:
 - a. The E-Minis offered and sold by Hardman are securities under § 61-1-13 of the Act;
 - b. Hardman wilfully violated § 61-1-1 of the Act by making misrepresentations and omissions of material fact in connection with the offer of a security; and
 - c. Hardman wilfully violated § 61-1-3 of the Act by selling securities in Utah without a license.
- 12. Hardman admits the substance of the Division's investigative conclusions, and consents to the Division entering an Order:
 - a. Requiring Hardman to cease and desist from engaging in any further conduct in violation of the Utah Securities Act; and
 - b. Requiring that Hardman pay a fine of five-thousand dollars (\$5,000) to the Division of Securities within three months of the filing of this Stipulation and Consent Order, or alternatively, a reduced fine of five-hundred dollars (\$500), if

¹On March 30, 2005, after Investor sought the advice of an attorney, and filed a complaint with the Division, Hardman paid Investor \$20,000, representing her principal investment.

Hardman executes and returns this Stipulation and Consent Order to the Division,
along with the fine, by 5:00 p.m., Tuesday, January 31, 2006.

13. This Stipulation constitutes the entire agreement between the parties herein and
supersedes and cancels any and all prior negotiations, representations, understandings, or
agreements between the parties. There are no verbal agreements which modify, interpret,
construe, or otherwise affect this Stipulation in any way.
14. Hardman acknowledges that the Order does not affect any civil or criminal causes of
action that third parties potentially might have against Hardman arising in whole or in
part from Hardman' actions.
15. Violation of the Order accompanying this Stipulation constitutes a third degree felony
pursuant to § 61-1-21(1) of the Act.

Utah Division of Securities

Date: 2/9/6

By: [Signature]

Michael Hines

Director of Enforcement

Respondent

Date: 2-2-2006

By: [Signature]

James Melvin Hardman

Approved:

[Signature]

Jeff Buckner

Assistant Attorney General

Approved:

[Signature]

Richard J. Culbertson


Counsel for Respondent

ORDER

Pursuant to the terms of the Stipulation defined above, the Director of the Utah Division of Securities hereby orders that:

- a. James Melvin Hardman cease and desist from engaging in any further conduct in violation of the Utah Securities Act; and
- b. James Melvin Hardman pay a fine of five-thousand dollars (\$5,000) to the Division of Securities within three months of the filing of this Stipulation and Consent Order, or alternatively, a reduced fine of five-hundred dollars (\$500), if Hardman executes and returns this Stipulation and Consent Order to the Division, along with the fine, by 5:00 p.m., Tuesday, January 31, 2006.

DATED this 10th day of ^{February}~~January~~, 2006.



WAYNE KLEIN

Director, Utah Division of Securities

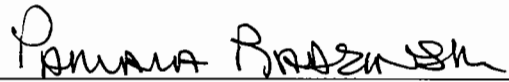


CERTIFICATE OF MAILING

I hereby certify that on the 13th day of February 2006, I mailed, regular mail, a copy of the foregoing **Stipulation and Consent Order** to:

Richard J Culbertson
Culbertson Law Office
180 South 300 West Ste 220
Salt Lake City UT 84101

James M Hardman
2062 Sycamore Lane
Salt Lake City UT 84117



Executive Secretary